

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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4 UNITED STATES OF AMERICA,

5 v.

20 Cr. 162 (JPO)

6 SCOTT ROBINSON,

7 Defendant.

Sentence

8 New York, N.Y.
9 March 9, 2021
10 11:45 a.m.

12 Before:

13 HON. J. PAUL OETKEN,

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS
17 United States Attorney for the
18 Southern District of New York
19 BY: SARAH MORTAZAVI
20 Assistant United States Attorney

21 WILLIAM M. BUTLER, JR.
22 Attorney for Defendant

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1 (Case called)

2 THE DEPUTY CLERK: Starting with the government,
3 counsel, please state your name for the record.

4 MS. MORTAZAVI: Good morning, your Honor. This is
5 Sarah Mortazavi for the government.

6 THE COURT: Good morning.

7 MR. BUTLER: Good morning, your Honor. For the
8 record, my name is William Butler. I'm retained by Scott
9 Robinson, who is seated to my left.

10 THE COURT: Good morning.

11 Just to confirm, Mr. Butler and Mr. Robinson, you can
12 hear me?

13 MR. BUTLER: Yes, your Honor.

14 THE COURT: Can you see me as well?

15 MR. BUTLER: Yes, your Honor.

16 THE COURT: We're doing this conference by video, and
17 we're here for sentencing in this case.

18 The defendant pleaded guilty on September 16, 2020, to
19 participating in a drug misbranding and adulteration conspiracy
20 in violation of 18 U.S. Code, Section 3371.

21 We're conducting this proceeding remotely by
22 videoconference, and we've obviously had a bunch of technical
23 issues this morning. But it looks like we're finally
24 connected.

25 I can see the defendant and defense counsel, and they

1 can see me by video. And the government, Ms. Mortazavi, is
2 dialed in through an audio connection.

3 Doing this proceeding remotely is authorized by the
4 CARES Act in light of the COVID-19 pandemic and by the chief
5 judge's standing order and her finding that sentencing
6 proceedings cannot be conducted in person without jeopardizing
7 public health and safety, as long as the defendant consents.

8 The defendant has indicated by letter that the
9 defendant wishes to have this proceeding take place remotely by
10 video, and I want to confirm that he consents to that.

11 Mr. Butler, have you spoken to your client about
12 proceeding remotely?

13 MR. BUTLER: Yes, your Honor, I have. He does consent
14 to proceeding remotely.

15 THE COURT: All right. Thank you.

16 Just to confirm, Mr. Robinson, you've spoken to your
17 lawyer, and you do consent to proceed by video today?

18 THE DEFENDANT: Yes, I have, your Honor.

19 THE COURT: All right. I find that the defendant has
20 consented to proceed remotely. I also find that this
21 proceeding cannot be further delayed without serious harm to
22 the interests of justice for the same reasons I discussed on
23 the record in connection with the guilty plea hearing,
24 including the significant interest in bringing finality to this
25 case expeditiously, both from the defendant's perspective, as

1 well as the public's interest in final resolution of this
2 matter as to Mr. Robinson.

3 In preparation for sentencing today, I've reviewed the
4 following documents, and I just want to make sure that I've
5 reviewed everything I should have.

6 I've gone through the presentence report with an
7 addendum and sentencing recommendation by the probation
8 department on the file version dated December 4, 2020; the
9 submission by defense counsel dated February 26 with several
10 letters attached from several family members of Mr. Robinson,
11 friends of Mr. Robinson, all of which I've read; and the
12 submission by the government dated March 5.

13 Do I have everything I should have, Ms. Mortazavi?

14 MS. MORTAZAVI: Yes, your Honor.

15 THE COURT: And, Mr. Butler?

16 MR. BUTLER: Yes, your Honor.

17 THE COURT: Mr. Butler, have you read the presentence
18 report and discussed it with your client?

19 MR. BUTLER: Yes, your Honor. I've read it, my client
20 has read it, we've discussed it together, and we find it to be
21 factually accurate.

22 THE COURT: Thank you.

23 Ms. Mortazavi, have you reviewed the presentence
24 report?

25 MS. MORTAZAVI: Yes, your Honor, I have. And the

1 government has no objections.

2 THE COURT: Thank you.

3 I adopt the facts in the presentence report as my
4 findings of fact for sentencing today.

5 As you all know, the starting point in the federal
6 system for sentencing is the federal sentencing guidelines.
7 The Court is not required to follow the guidelines, but I am
8 required to start with the sentencing guidelines and make sure
9 we have an accurate calculation of the guidelines as an initial
10 benchmark before determining an appropriate sentence.

11 In this case, there was a plea agreement that
12 stipulated to the guideline calculation, and the probation
13 department's calculation is the same. I believe that is the
14 correct guidelines calculation, and I adopt the calculations
15 set forth in the presentence report as the guideline
16 calculation.

17 The guidelines call for a sentence of five years,
18 which is also the statutory maximum sentence. There is no
19 mandatory minimum in this case. So the guideline sentence is a
20 five-year sentence.

21 I'd now like to give you all an opportunity to speak.
22 I'd like to point out that I've read anything. So you don't
23 need to repeat anything. Anything you'd like to highlight
24 today, you're welcome to, and I'll start with Mr. Butler for
25 the defendant.

1 MR. BUTLER: Thank you, your Honor.

2 Your Honor, to begin with, we've obviously read the
3 government's submission. And there are a couple of points in
4 the government's submission that we take issue with, the first
5 point being the government says that 23 years ago when Scott
6 Robinson was in the Navy that he pled guilty to distributing
7 anabolic steroids.

8 That's not the case, your Honor. He purchased items
9 that could readily purchased at GNC. This was during the time
10 of the Mark McGwire home run race. I don't know if the Court
11 recalls that.

12 That's what he purchased, and that was the substance
13 that he had and that he sold, and that's what happened there.
14 It was not anabolic steroids. I just want to take issue with
15 what the government put in its memorandum.

16 The other point I have to take issue with is it's been
17 mentioned in the government's memorandum that the substances
18 that Scott Robinson was selling were all through advertisements
19 that said "will not test."

20 "Will not test" we believe -- not we believe. We
21 know -- is a term of art used in the horse racing industry,
22 used in tack shops all over this country. When a substance is
23 labeled "will not test," that means it's not going to run afoul
24 of the regulations. That's what "will not test" means.

25 Earlier, much, much earlier before Scott Robinson was

1 indicted, he explained that to the government when it was
2 interviewing him. But I don't believe it was taken note of.

3 We maintain that the term "will not test" doesn't mean
4 something illegal will turn up. It only means that what is in
5 the substance is not going to run afoul of regulations.

6 Other than that, your Honor, I'd like to shift gears
7 and talk about Scott Robinson's history and characteristics
8 pursuant to 18 U.S. Code, Section 3553(a).

9 In doing that, since the Court has read our
10 submission, then it can see and, consistent with the
11 presentence report, Scott has a criminal history of 0.

12 He is a very helpful person. He's come to the aid of
13 all sorts of people. Giving him a noncustodial sentence we
14 believe will not diminish what he has entered a guilty plea to.

15 Actually, I could point out to the Court that in
16 another jurisdiction, in fact, in the Sixth Circuit, Tailor
17 Made pharmacy pled guilty to almost the same thing as Scott
18 has, and they only received three months' home detention and
19 three years' probation.

20 So what we're asking for is, I guess, a case where a
21 sentencing disparity might come up. This is a case where there
22 is no proof that any substance that Scott Robinson had anything
23 to do with selling endangered any race horse anywhere. No
24 horse became ill or became -- I don't believe died because of
25 anything it had put into it from something that Scott Robinson

1 sold.

2 However, he has admitted his culpability in this
3 adulteration and misbranding conspiracy. He's entered a
4 guilty plea which reminds me of one other point.

5 The government seemed to make a point that he really
6 wasn't sorry because that wasn't mentioned in the memorandum.
7 Your Honor, I have practiced in roughly ten different federal
8 districts, and I always assumed that it was up to the defendant
9 during his allocution to explain that he was sorry, not for me
10 to explain how sorry he was in my memorandum. So I didn't do
11 that.

12 If that's the case in New York, I apologize. But
13 Scott wants to address the Court when the time comes, and I'm
14 sure he'll let the Court know what he thinks.

15 THE COURT: Let me just ask you, Mr. Butler: What was
16 the case you mentioned where you said the defendant was
17 sentenced to three months?

18 MR. BUTLER: Yes, your Honor.

19 (Pause)

20 THE COURT: The court reporter dropped off.

21 Mr. Butler, we'll have to repeat going back to the
22 point when I said what was that case and do you know the
23 defendant's name.

24 MR. BUTLER: Your Honor, the defendant's name was
25 Jeremy Delk. He was the owner of Tailor Made pharmacy.

1 Your Honor, then I was going into the point that the
2 author of the presentence report recommended a 36-month
3 sentence rather than the 60-month and based that recommendation
4 on what I saw as two main points: One, the amount of money
5 that was earned by Scott Robinson; and two, the obstruction of
6 justice for which he was assessed two points.

7 I mentioned this in the memo, but I'll bring it up
8 again. As far as the obstruction of justice, Scott used very
9 poor judgment. When his computer was seized, he wanted his
10 computer back. And he told the agent that he would email too
11 many people about the investigation.

12 He did not do that. He apologized to the agent for
13 saying that, and he also apologized to the United States
14 attorney when he was giving his statement.

15 So granted that fits the elements of obstruction
16 attempt. But I believe that's not something that he should be
17 severely punished for because, A, he didn't do it; and B, he
18 apologized to the agent and apologized to the United States.
19 So that's one thing.

20 The other point is Scott did make a considerable
21 amount of money. But as noted in the PSR, he filed income
22 taxes on that money each year when he -- on April 15 when it
23 was due.

24 So this is not a case where someone has broken the
25 law, made a ton of money, and no one knew it until he was

1 indicted. This man paid taxes on the money that was earned.
2 And I think that that should be considered. Granted, he was
3 guilty of a drug adulteration misbranding conspiracy, but he
4 did pay taxes on this money.

5 And I think those two responses to those two points
6 would allow the Court to give a noncustodial sentence, which
7 would be sufficient but not greater than necessary. Thank you.

8 THE COURT: Thank you, Mr. Butler.

9 Before I turn to Mr. Robinson, I'm going to give the
10 government a chance to speak.

11 Again, I've read your submission, as well as the
12 attached information. But, Ms. Mortazavi, I'm going to give
13 you a chance to respond. And I may have a couple of questions
14 as well.

15 MS. MORTAZAVI: Thank you, your Honor.

16 I'd like to respond directly to some of the points
17 that defense counsel has just made and just reiterate some of
18 the points that we did include in our submission, fully mindful
19 of the fact that the Court has reviewed.

20 I think there are some points in particular that we
21 would just like to highlight just based on our view on the
22 egregiousness of some of this conduct.

23 I'm going to take the defendant's comments in order.
24 First, with respect to his claim that the defendant didn't sell
25 steroids in the Navy, that's inconsistent with what he told law

1 enforcement agents when he was asked about his dishonorable
2 discharge from the Navy. And really, it's beside the point.

3 The point that we were trying to make in our
4 submission is that the defendant was on notice at the time he
5 was in his mid 20's of the type of conduct that would be
6 considered illegal, that would lead to consequences.

7 He faced leniency at that point. He was not
8 prosecuted. He was only dishonorably discharged. However, he
9 should at that point have taken that as a wake-up call and
10 moved away from any sort of criminal activity related to
11 distributing unapproved drugs.

12 Instead, he moved on to more elaborate and more
13 lucrative ventures, including the conduct which underlies the
14 current charges which extends to approximately a decade's worth
15 of distributing misbranded and adulterated drugs.

16 Second, in response to the defendant's claim that the
17 disclaimer "will not test" that was associated with some of the
18 products on the website only meant that those products were
19 somehow in compliance with state racing regulators' rules --
20 that simply does not bear out when you consider them in the
21 context in which Mr. Robinson and his coconspirators marketed
22 those products.

23 They were specifically marketed on websites that were
24 targeted at race horse trainers. The claims associated with
25 those drugs that were posted on the websites billed them as

1 performance enhancers, for example, very potent blood builders,
2 which is a common performance enhancer that both human and
3 animal athletes use in advance of events or races and that are
4 largely prohibited by many racing jurisdictions specifically
5 because there are very, very few approved uses for those drugs.
6 And yet a blood builder would be advertised on Mr. Robinson's
7 website as one that "will not test."

8 And in particular to Mr. Robinson's case, there were
9 chats where he discussed with his coconspirators the fear that
10 one of his products would test positive and that it would be
11 traced back to them.

12 Taking the sum total of that, although perhaps one
13 could read into "will not test" on the website as indicating
14 that it was compliant, that's not what it said, and that's not
15 what it meant. Mr. Robinson and his coconspirators knew that
16 when they advertised their drugs.

17 Now, the defense's claim that no horse became ill or
18 died by using one of the products that Mr. Robinson and his
19 coconspirators distributed is flatly wrong. And we've included
20 as an attachment to our submission some chats in which
21 Mr. Robinson received customer complaints, numerous customer
22 complaints, about unsanitary drugs that he had sold.

23 The customers were reporting that the horses were
24 having adverse effects, including that they appeared to be
25 heavily sedated; that they could not lift their heads; that

1 they could barely walk; that they had fevers.

2 All of these were consequences of the way in which
3 Mr. Robinson conducted his business, which was to allow his
4 drugs to be manufactured in unsanitary facilities, to not seek
5 appropriate testing and regulatory approval to ensure that his
6 drugs were safe, to attempt to conceal his participation and
7 his coconspirators' participation so that it would be more
8 difficult for customers to trace these misbranded drugs back to
9 him with little regard for the risks associated with misbranded
10 and adulterated drugs.

11 Finally, I'd like to speak to the defendant's claim or
12 the defendant's reference to Defendant Jeremy Delk, who is the
13 owner of the company Tailor Made that was recently sentenced in
14 connection with a plea agreement for distribution of
15 adulterated misbranded drugs.

16 In that case, had the government been given the
17 opportunity to do so, we would have responded in more detail,
18 but I'll give the Court some broad strokes.

19 The breadth of the crimes in that case is completely
20 different from what we are facing here with Mr. Robinson. The
21 conduct in that case was short-lived. The charged offense
22 lasted from October 2018 to May 2020. That's less than two
23 years. Whereas, Mr. Robinson engaged in this conduct for
24 almost a decade.

25 The revenue generated was less than half of what

1 Mr. Robinson generated. He, over the course of his years of
2 doing business with various conspirators, made close to \$4
3 million in sales. The revenue in that case was only
4 \$1.7 million.

5 While there was only one type of drug that was at
6 issue in that case, here, there are scores of various drugs
7 that Mr. Robinson distributed, all of which were illegal, all
8 of which were adulterated and misbranded, all of which were
9 distributed in a manner to defraud or mislead drug regulatory
10 agencies and, specifically, the Florida Department of Health,
11 the FDA, and, to an extent, customers by making it more
12 difficult to trace packages back to Mr. Robinson and to his
13 coconspirators.

14 As I stated, there are numerous drugs that the
15 defendants created and sold. And whether they were marketed to
16 be performance enhancing with names like Blast Off Extreme
17 injection, Blast Off Red injection, or Numb It injection, which
18 were marketed to have very extreme effects on horses, including
19 to build their blood, lead to increased heart muscle
20 contractions. Or, as in the case of one injection, was
21 advertised as the most powerful pain shot in the industry.

22 Whether it was those types of drugs or even more
23 innocuous drugs, those that were intended to treat some kind of
24 disease or ailment in a horse, all of them were distributed in
25 a manner to defraud or mislead others. And the defendant made

1 millions of dollars in revenue in doing so.

2 As I stated, the defendant used unsanitary facilities.
3 His drugs were never approved. The drugs did not contain the
4 ingredients. So customers did not know what they were
5 injecting in animals.

6 And they were sold to laypeople, not to veterinarians,
7 to people who did not have the training or the medical
8 expertise to determine what drugs were necessary for a horse or
9 the best way to inject those drugs into a horse.

10 All of that, as I stated briefly, led to increased
11 risk to the ultimate consumers, the horses and the other
12 animals who were receiving these drugs.

13 Your Honor, the points that I want to highlight in my
14 submission are three brief points. The first is that
15 Mr. Robinson and his coconspirators -- and, to an extent, this
16 distinguishes his conduct from that of Jeremy Delk and Tailor
17 Made -- knew that what they were doing was not legal. They
18 knew that they could be inspected and shut down by state-run
19 regulatory agencies or the FDA. So they deliberately tried to
20 act deceptively.

21 This isn't something that they did when it appeared
22 that they would be subject to this federal prosecution,
23 for example. It was baked into their entire conspiracy.

24 Whether Mr. Robinson was engaging in a conspiracy with
25 one person or another, this was really a fundamental way of

1 doing business for him because he appreciated the illegality of
2 his conduct.

3 Website statements appear to make the product appear
4 to be innocuous as if they were not regulated by the FDA when
5 in fact they absolutely were and are considered drugs under the
6 relevant statutes.

7 Mr. Robinson received customer complaints. He even
8 himself noticed that bottles were unsanitary, bottles that were
9 being prepared by his coconspirator, Mr. Mangini, as part of
10 their joint venture.

11 He noted to others that there were flies in bottles,
12 that there were black particles floating in bottles, and this
13 was months before he received customer complaints about bad
14 products having adverse effects in horses. And yet,
15 Mr. Robinson did nothing about it.

16 Several months after that, before the Department of
17 Health conducted an inspection of Mr. Mangini's facility that
18 he was using to manufacture the drugs that Mr. Robinson was
19 then selling -- and as a result of that inspection, which we've
20 quoted in our submission -- and we've attached the report for
21 the Court's review. So I will not go into it in detail. But
22 suffice it to say there were numerous violations and serious
23 violations found. Mr. Mangini's pharmaceutical license was
24 suspended.

25 Mr. Robinson's response to that was, well, the Florida

1 Department of Health has bigger things to worry about than you.
2 He basically shrugged, and he continued. Even after that
3 occurred in 2016, Mr. Robinson continued to distribute
4 adulterated and misbranded drugs, performance-enhancing drugs
5 targeted to build humans and animals up until his arrest and
6 really up until the search of his most recent offices that he
7 was using to conduct his business, after he parted ways with
8 Mr. Mangini when, in September of 2019, federal law enforcement
9 agents seized many adulterated and misbranded drugs and many of
10 the devices used to create those adulterated and misbranded
11 drugs and seemingly put a halt to Mr. Robinson's business and
12 made it clear that what he was doing was illegal and was on the
13 radar of law enforcement agents.

14 Mr. Robinson's response to that is telling. Instead
15 of desisting from this conduct, he then reached out to a
16 contact to try to obtain machinery that is designed
17 specifically to create omeprazole paste because he intended to
18 continue his drug adulteration and misbranding activities even
19 though he has a long history of warnings, of indications that
20 what he was doing was wrong, and indications that law
21 enforcement agents were supervising his conduct.

22 Those, your Honor, are some of the many reasons that
23 we think specific deterrence is warranted here and that we
24 think the just punishment counsels in terms of a significant
25 term of imprisonment and why this case is nothing like the case

1 of Jeremy Delk in which defense counsel is relying on here.

2 Mr. Robinson is sophisticated. He received many
3 warnings over the course of ten years that this type of conduct
4 was illegal. It was not a momentary lapse in judgment. And we
5 think that, unfortunately, his conduct up to this point
6 illustrates that he is not contrite or remorseful and that he
7 viewed his conduct as really no big deal and believed that no
8 consequences would follow.

9 And we ask the Court to send a different message, both
10 to Mr. Robinson and to members of the community, that this type
11 of conduct can lead to ill effects, that this type of conduct
12 will not be tolerated and that it is taken seriously by the
13 government and the Court.

14 And, your Honor, I have no further points. And I'm
15 happy to answer any questions that the Court may have.

16 THE COURT: Thank you.

17 One question I have is the Jeremy Delk case -- I
18 appreciate the points you made about it being a different and
19 smaller scale and more limited scheme.

20 Do you happen to know whether the charges in that case
21 were misdemeanor charges as opposed to felony charges and
22 perhaps what the guidelines were?

23 MR. BUTLER: Your Honor, may I respond?

24 THE COURT: Yes.

25 MR. BUTLER: They were felony charges. And Mr. Delk

1 actually distributed more than ten unapproved drugs, more than
2 ten. And he also destroyed pharmaceutical records to keep
3 agents from finding them. I should have added that earlier to
4 compare apples to apples.

5 THE COURT: Does either of you know what his guideline
6 range was?

7 MR. BUTLER: No, your Honor. I'm sorry.

8 MS. MORTAZAVI: This is Sarah Mortazavi for the
9 government. I do not know his guideline range. I'm certain we
10 could find it. I do agree that those were felony charges.

11 I would just like to speak to the point that defense
12 counsel made so that the Court is left with a complete picture
13 of what happened.

14 Defense counsel just referenced the fact that Jeremy
15 Delk destroyed pharmaceutical records in order to deter the
16 investigation and mislead others. Mr. Robinson also engaged in
17 similar conduct, including putting fake return address labels
18 on shipments that were sent out to customers and in chat
19 communications with his coconspirator, Mr. Mangini, stating
20 that he did so specifically because of security because he
21 didn't want people -- because there was a belief that people
22 were watching that address and that for security purposes, they
23 had to change the return address labels on shipments to
24 customers.

25 That is not like the Jeremy Delk case, an isolated

1 moment of poor judgment and illegality. That, as I said
2 before, was baked into the very concept of the conspiracy that
3 Mr. Robinson was engaged in.

4 So to the extent the Court is looking at deceptive
5 conduct here, I believe that Mr. Robinson has engaged in much
6 more over a far longer period of time.

7 THE COURT: Would you also address the issue of
8 relative culpability vis-à-vis Mr. Mangini and also vis-à-vis
9 the other people in the related case that's pending I believe
10 before Judge Vyskocil.

11 MS. MORTAZAVI: Certainly, your Honor. I'll take that
12 in reverse order.

13 With respect to the defendants who are pending in the
14 case before Judge Vyskocil, that comprises a very broad group
15 of defendants. That includes both people who distributed drugs
16 for a much less intense period of time, people who worked for
17 others in distributing drugs and so were employees as opposed
18 to supervisors or managers or leaders, which Mr. Robinson is.

19 That also comprises race horse trainers and
20 veterinarians, which are obviously on quite a different plane.
21 Veterinarians, unlike Mr. Robinson, are licensed.

22 In some cases, those veterinarians, by virtue of the
23 fact that they are licensed, were really selling their licenses
24 in order to allow illegal prescriptions to be issued to cover
25 up the doping that was occurring.

1 And in the case of trainers, they're the ones who are
2 in many instances injecting horses with drugs. In some cases
3 the defendants who are facing charges in the case before
4 Judge Vyskocil are customers of Mr. Robinson.

5 They received his products, and they administered them
6 to horses. Whether they received them from him directly; from
7 his coconspirator, Scott Mangini; or from another intermediary.

8 Now, with respect to relative culpability, your Honor,
9 Mr. Robinson has engaged in this conduct for a decade. That's
10 on par with some of the defendants, including some of the drug
11 manufacturers and people involved in that type of conduct
12 before Judge Vyskocil. But it is certainly a longer period of
13 time than many of the people who have been charged in that
14 case.

15 So to sum up those two points, your Honor, because I
16 understand I've gone into a little bit of detail about the
17 different categories just to give context.

18 I believe that With respect to Mr. Robinson, the ways
19 in which he is distinct is that unlike many of those
20 defendants, he was engaged in this conduct for a far longer
21 period of time.

22 Unlike many of those defendants, he was also the
23 leader of the conspiracy in that he put in the money, he gave
24 direction, and when he would end the conspiracy with one set of
25 coconspirators, he would start up a new conspiracy with another

1 set of coconspirators -- or pardon me. He would set up a new
2 venture with another set of coconspirators.

3 So he falls somewhere in the middle with respect to
4 that group of defendants, some of whom are comparable in terms
5 of the extent of their criminality and others which are not.

6 With respect to Mr. Mangini, as the Court is aware,
7 Mr. Mangini is charged in two counts. The first count relates
8 to Mr. Mangini as coconspirator with Mr. Robinson.

9 But we consider the two on par because Mr. Mangini,
10 just as Mr. Robinson did, after they split ways, continued his
11 conduct, continued his business, and just found a new set of
12 coconspirators and found even more ways to attempt to hide his
13 involvement in the new business.

14 One distinction that I would draw between Mr. Robinson
15 and Mr. Mangini, your Honor, is that Mr. Mangini at one point
16 was licensed by the Florida Department of Health.

17 He held a pharmaceutical license, which means that
18 there is no question that he was aware of the strict
19 regulations that applied -- the need for him to maintain
20 sanitary facilities, the need for him to only sell approved
21 drugs, to have proper paperwork associated with those drugs.

22 And even after his license was suspended, he continued
23 to exercise the same practices that he had before, even though
24 he was unlicensed. Many of their conduct is the same.

25 Many of the ways in which they tried to obscure their

1 participation in their respective businesses are the same, and
2 they both had leadership roles in their respective
3 conspiracies.

4 The one distinction that I would draw is the one that
5 I have just highlighted, which is the fact that Mr. Mangini,
6 unlike Mr. Robinson, was at one point licensed to engage in
7 this business.

8 THE COURT: All right. Thank you.

9 Only one other question. And that is, just in
10 thinking at a high level about this case, I've been trying to
11 puzzle through the harm.

12 I understand your point about the misleading of
13 regulators, federal and state health regulators, and perhaps
14 race horse regulators as well and that being relevant and
15 important for the reason of promoting respect for the law and
16 so forth.

17 And then there's the issue of harm to animals, which
18 you've highlighted. And then you also mention harm to
19 customers or the misleading of customers.

20 And I'm a little confused about whether I should think
21 of those customers as, well, coconspirators, sort of in on the
22 deal, sort of people who were wink, nudge buying these
23 materials, buying these drugs because they knew exactly that
24 they were performance-enhancing drugs, which is something that
25 the government has seemed to suggest sort of being in on it,

1 or, on the other hand, being victims who are misled.

2 If you could sort of clarify or shed any light on that
3 issue.

4 MS. MORTAZAVI: Certainly, your Honor. The reason for
5 those different strands is because these products were so
6 widely marketed and sold with no restriction. Many similar
7 legally run websites will have Rx requirements and will require
8 that a vet submit a prescription or that a prescription be
9 uploaded.

10 That's not what Mr. Robinson did. What he did was
11 sell to everybody and anybody. For example, some of the other
12 blood builders, the potent pain relievers -- it's very clear
13 that there is, as the Court put it, a wink, wink, nudge, nudge
14 relationship with the customer where everyone understands that
15 what is being sold is a performance-enhancing drug and everyone
16 understands what the phrase "will not test" means.

17 But there were a number of customers who were not in
18 the race horse industry, a number of customers who purchased
19 drugs, other than those I've highlighted. And the fact that
20 there were not details associated with those products to allow
21 those customers to evaluate what was in them and whether it is
22 appropriate for the horse is an issue.

23 For example, a drug will be listed as having a
24 proprietary blend of ingredients, which gives the consumer
25 really no basis to know what is in the drug, how it's going to

1 react with the horse, how it was manufactured.

2 Similarly, as I pointed out a few minutes ago, there
3 were a number of customers who put in complaints because the
4 products that they received were having adverse effects on
5 horses.

6 Now, those customers did not know that there were poor
7 manufacturing practices being exercised. They thought that
8 they were potentially buying valid, legitimate drugs.

9 And there were disclaimers associated with many of the
10 products on the website that were designed to mislead agencies
11 but could easily have misled consumers that state things like,
12 these statements have not been evaluated by the Food and Drug
13 Administration and it is not intended to diagnose, treat, cure,
14 or prevent any disease, statements that seem to imply that the
15 drugs that are being sold, even though they are injectables,
16 are in fact a supplemental source of vitamins.

17 That is profoundly misleading. For someone who isn't
18 sophisticated enough to know what is going on on a website like
19 horseprerace.com, there is a drug sold that is intended to
20 build the blood of a horse.

21 I understand that I've categorized broadly two
22 different types of customers. I think the danger is that there
23 are those in the race horse industry who know exactly what is
24 happening who are purchasing these drugs for a very particular
25 purpose, and Mr. Robinson is aware of that, based on the

1 marketing of the drugs and the name of the website.

2 And there are other people who perhaps own horses who
3 have no interest in the race horse industry who pick up one of
4 these products assuming that it is legitimate, assuming that it
5 is not a drug that requires FDA approval, it is not a drug that
6 is different from a vitamin injected in a horse. And that
7 could lead to deleterious effects. So we view that in two
8 ways.

9 Your Honor, if I may, briefly. As to my points
10 earlier, the Court had asked if we were aware of the guidelines
11 range of Jeremy Delk, and I was able to briefly check. And the
12 guidelines range, consistent with the points that I made
13 earlier regarding the extent of the conduct, are completely
14 different.

15 The guidelines range in that case was an offense level
16 of 8, and I believe there were no criminal history points,
17 which is a far cry from the guidelines that are here where they
18 are so high that they are essentially capped out at the
19 statutory max of 60 months.

20 And that just further illustrates that relying on the
21 conduct for Jeremy Delk is really no guidance for the Court
22 whatsoever when it comes to Mr. Robinson's conduct.

23 THE COURT: That's odd that it would be an offense
24 level of 8 if he was making in the millions of dollars. It
25 seems like somehow the calculation must have been done

1 differently with respect to financial gain. Right?

2 MR. BUTLER: Your Honor, may I jump in?

3 THE COURT: Let me just let Ms. Mortazavi answer that
4 if she wants, and then you'll be able to jump in.

5 MS. MORTAZAVI: Your Honor, I think that may be right.
6 The \$1.7 million that I quoted was based on the revenue of the
7 company and the forfeiture amount that was ordered in
8 connection with the sentencing.

9 And I am attempting to find out the calculation of the
10 guidelines range. I'm happy to inform the Court of it. But
11 certainly it looks like that \$1.7 million was not included in
12 the offense level.

13 THE COURT: Okay. Thank you.

14 Mr. Butler.

15 MR. BUTLER: Thank you.

16 Your Honor, 18 of the 29 points on Scott Robinson's
17 offense level were due to the amount of money earned. The
18 Court has just been referring to that. Over \$3.5 million was
19 counted against Scott Robinson.

20 And that's why he ended up with 29. That was 18
21 points. Otherwise, he would have been at a level 6 getting two
22 points -- I'll stop right there. But the big point is 18
23 points really, really changes the calculus here or the risk I
24 think I should say from if you take 29 and subtract 18 from it,
25 and you've got 11. So he's in the same ballpark as Mr. Delk.

1 That's one thing.

2 The other point I wanted to make, your Honor -- I got
3 it right here. The United States is talking about harm to
4 animals. The United States has not interviewed any owners.
5 The harm it's talking about is gleaned from emails that were
6 sent to Scott Robinson. There are no interviews of any
7 victims.

8 The United States doesn't know that customers were
9 misled. There is no one popping up here saying, I was misled.
10 I was misled. We're just speculating. I think that's
11 important to take into account.

12 THE COURT: Okay. Thank you.

13 MS. MORTAZAVI: Your Honor, if I may, this is Sarah
14 Mortazavi.

15 THE COURT: Yes.

16 MS. MORTAZAVI: I hate to go back and forth on this,
17 but because the Court has asked questions about the guidelines
18 range with respect to Mr. Delk, I'd like to point out that I
19 have a version of the plea agreement that I'm happy to
20 distribute to the Court and defense counsel if you would like
21 to review it.

22 But it appears in the plea agreement that the parties
23 did not agree to calculate the guidelines based on Section
24 2B1.1 for basic economic offenses. I want to make clear that
25 the parties have a plea agreement here and a stipulated

1 guidelines range. Defense counsel took no issue with the fact
2 that we applied 2B1.1 and agreed in that calculation.

3 Instead, Section 2M1.1 of the guidelines was applied,
4 which involves tampering with consumer products. So I think
5 that is the basis for the low guidelines range, which includes
6 a base offense level of 6 points for leadership and 10 points
7 for obstruction of justice.

8 THE COURT: Right. I'm looking at the Department of
9 Justice press release on the case from the Eastern District of
10 Kentucky. The \$1.7 million was the amount that was forfeited
11 by Tailor Made pharmacy.

12 There is no indication of financial amounts for Delk
13 because, as you noted, that was a different part of the
14 guidelines that was used. In any event, it is what it is.

15 Thanks. I think you've answered my questions, and I
16 want to thank counsel for their helpful submissions and remarks
17 today.

18 I'd like to give Mr. Robinson an opportunity to speak.
19 You're not required to, but if you would like to speak before
20 sentencing, you may do so now.

21 THE DEFENDANT: Yes, your Honor. Are you able to hear
22 me, your Honor?

23 THE COURT: Yes.

24 THE DEFENDANT: Your Honor, I want to thank you for
25 this opportunity to speak to you today. I first want to

1 apologize to the government of the United States for causing
2 this issue.

3 Secondly, I'd like to apologize to my family and
4 friends for putting them through this. And lastly and mostly,
5 I want to apologize to the horse racing industry.

6 Horse racing is the only thing in my life that I have
7 ever truly loved. From the first time I was made to go to the
8 racetrack, I fell in deep love with horse racing, and this
9 negative attention is not what I'm about. And I sincerely
10 apologize for that.

11 For the last 15 years plus, I've promoted horse racing
12 and tried to increase its popularity. I take full
13 responsibility for the actions I have taken. Along with my
14 coconspirator, Scott Mangini, we created omeprazole paste
15 formula together.

16 In the beginning, we were featured in horse magazines.
17 Our products sold at most tack shops all across the
18 United States. We even shipped our products to the sheik of
19 Dubai.

20 Being that omeprazole was over the counter and not
21 banned by any sport or horse racing, I thought it was okay. I
22 even consulted with my now deceased former lawyer, Barry Cohen.

23 I wasn't strong enough to say no because I was getting
24 the answers I wanted to hear. I was naive to the fact that it
25 was wrong in the beginning. Scott Mangini was a licensed

1 pharmacist. And in the beginning, he had me convinced that
2 what we were doing was okay since UlcerGard, our competitive
3 product, was sold over the counter.

4 Once I received the warning letter from the FDA in
5 2014, I realized it was wrong, what we were doing. But I was
6 too weak to stop the business. In 2015, I stopped doing
7 business with Scott Mangini and began pursuing a generic
8 approval for omeprazole paste through an FDA-approved
9 laboratory called PharmaTech.

10 I spent nearly \$2.7 million of my own money doing
11 studies and testing to get a new abbreviated drug animal
12 application, which I have in these books right here.

13 These are all the studies that I've done and that the
14 laboratory has done, all the pharmacology, all the safety and
15 efficacy testing. I am within six months of getting FDA
16 approval on omeprazole paste if I'm able to finish.

17 During this time of getting this abbreviated drug
18 animal application, I was told by the CEO, Ray Figueroa, that I
19 could give omeprazole paste out as samples. Once again, I
20 never questioned him.

21 During this process, PharmaTech went out of business,
22 and I lost my entire investment. The only thing I have to show
23 for it are these seven volumes of studies and lab work showing
24 that omeprazole is safe and not a performance-enhancing drug.

25 Omeprazole is not banned by the Olympics or WADA, the

1 World Anti-Doping Agency. I also have a bill showing I paid
2 \$2.7 million for this research over a four- to five-year
3 period.

4 Although not one horse was hurt by what I did with the
5 omeprazole paste, the victim in this matter was horse racing.
6 Horse racing is a giant sport. For as much as I have tried to
7 bring positive attention to the sport by donating money,
8 gifting horses to celebrities, this whole incident has ruined
9 all that I have done.

10 For this, I apologize with all my heart to all of the
11 people in horse racing -- the grooms, the trainers, the owners,
12 the drivers, and even track personnel.

13 If you see fit to sentence me to prison or probation,
14 I will abide by the rules 100 percent and use the time
15 constructively. Whatever I decide to do in the future will be
16 100 percent legal with absolutely no question of breaking the
17 law.

18 I now ask more than one person -- and I trust very few
19 people. I have recently started an Amazon business that is
20 growing by the month. I'm also trying to work with a doctor to
21 open an alternative medicine clinic to help people with chronic
22 illness.

23 Also, while I serve my time, be it in prison or
24 probation, I would like to continue my mental health work or my
25 CTE, chronic traumatic encephalopathy.

1 With my psychologist and my psychiatrist, along with
2 my own studies, we have made some headway in delaying the onset
3 of Alzheimer's, dementia, and Parkinson's-like symptoms.

4 With the use of my own hyperbaric chamber, I have had
5 great success in eliminating my headaches, my tremors, and an
6 overall sense of well-being. In the past four years, I have
7 developed sleep apnea and have to wear a CPAP machine to sleep
8 at all times.

9 My mental health has caused me problems for the last
10 20-plus years, and it has to change. And I feel like this
11 incident has made me focus on getting better even more so.

12 I will ask you to allow me to continue my mental
13 health treatment. Without my medication, I still have anxiety,
14 tremors, headaches, rapid mood swings. I know there is no
15 known cure for my condition, but I just have to do my best
16 every day and take my medication.

17 Your Honor, I know I've done wrong, but I've tried my
18 best to take care of my mother who has cancer, my father who is
19 nearly crippled, and I've set up college funds for my niece and
20 nephew.

21 I've taken care of my friends and horse racing by
22 donating water trucks and sponsoring races at numerous race
23 tracks. I've tried to help out anyone in need in horse racing.
24 I've donated money to Standardbred Retirement Foundation,
25 disabled jockeys, and even announcers.

1 Many times my trainers have had problems that I've
2 helped them with, whether it be personal or with the horses. I
3 sponsored dog kennels for homeless dogs, and I also sponsor 20
4 foster children at Christmas every year. I'm fortunate. I do
5 everything I can for the less fortunate.

6 Your Honor, I have never hurt an animal. Nor would I.
7 That I can say with 100 percent certainty. I have never met an
8 animal or a horse that I don't get along with.

9 Thank you for letting me speak. I would like to say
10 so very much more on this serious issue, but I've touched upon
11 the important issues.

12 If there are any questions you'd like to ask of me, I
13 would be more than willing to answer them now.

14 THE COURT: Thank you, Mr. Robinson.

15 Let me just ask counsel if there is anything else or
16 if there is any reason I cannot proceed to sentencing at this
17 point.

18 MR. BUTLER: No, your Honor, not on behalf of the
19 defense.

20 THE COURT: Thank you.

21 Ms. Mortazavi?

22 MS. MORTAZAVI: Nothing from the government. Thank
23 you, your Honor.

24 THE COURT: In preparing to sentence the defendant,
25 I've considered the presentence report and the recommendation

1 of probation, which recommends a sentence of 36 months'
2 imprisonment.

3 I've considered the written and oral statements of
4 defense counsel and the defendant and the government and all of
5 the letters submitted in support of the defendant.

6 And I've considered all of the factors in the statute,
7 Section 3553(a) of Title 18, which of course includes the
8 sentencing guidelines but also various other factors -- the
9 nature and circumstances of the crime, the defendant's history
10 and characteristics, and the purposes of sentencing, that is,
11 the need to reflect the seriousness of the offense; to promote
12 respect for the law; and to provide just punishment; the need
13 to afford adequate deterrence and to protect the public; and
14 the need for any training and treatment.

15 I'm required to impose a sentence that is sufficient
16 but not greater than necessary to comply with the purposes in
17 the statute.

18 The criminal conduct here was serious. The defendant
19 engaged in a scheme to market and sell misbranded and
20 adulterated drugs across the country, including
21 performance-enhancing drugs to race horse trainers and others.

22 These drugs were not tested or approved by the FDA.
23 They were not properly labeled and were not distributed
24 pursuant to prescriptions. In some cases, they were
25 manufactured in unsanitary facilities and, in some cases,

1 likely to cause harm to the animals they were intended for.

2 The defendant made a significant amount of money,
3 millions of dollars, in this scheme over the course of ten
4 years through various websites and business entities. This was
5 not a momentary lapse of judgment. It continued for many
6 years.

7 With respect to the defendant's history and
8 characteristics, that also must be considered. The defendant
9 is a 46-year-old man who has no prior convictions.

10 The lack of prior convictions is relevant, although
11 the importance of that consideration is lessened, to some
12 extent, by the extended period of criminal conduct here and by
13 the fact that the defendant continued engaging in this conduct,
14 in some ways, even after he became aware that federal and state
15 governments were looking into it. He also has certain medical
16 issues that are properly taken into account in arriving at an
17 appropriate sentence.

18 I think the BOP does have the ability to make sure you
19 have proper medication and proper treatment, although someone
20 with medical issues faces a more difficult time in prison than
21 someone who doesn't. And I'm aware of that and take it into
22 account.

23 And the many letters submitted in support of
24 Mr. Robinson highlight that he is, in many ways, a good person
25 who has contributed positively to his community and those

1 around him.

2 The letters describe him as generous and helpful to
3 others. A person's criminal conduct does not completely define
4 that person, and that should be taken into consideration as
5 well.

6 Balancing these considerations, I do conclude that
7 this is a sufficiently serious crime that extended over a
8 lengthy period of time such that serious punishment is
9 warranted.

10 One of the sentencing purposes, promoting respect for
11 the law, I think is important and salient in this case. This
12 entire business was in some ways designed to evade federal law,
13 as well as state laws. And I think that's important.

14 I also think the defendant's obstruction is troubling.
15 Although it was a momentary lapse of judgment, that aspect of
16 it, the defendant basically threatened the FBI agents with
17 blowing up the investigation, although he did apologize later,
18 as defense counsel has pointed out. But that is, again,
19 suggesting conduct that really flouts the law and disrespects
20 the law.

21 In addition to reflecting the seriousness of the
22 offense and promoting respect for the law, the goals of
23 specific and general deterrence play an important role here.
24 People need to realize that this sort of criminal conduct will
25 be taken seriously.

1 Now, weighing those considerations against the
2 mitigating factors I mentioned, the lack of criminal history
3 and the other positive personal characteristics and medical
4 challenges, I do agree with probation that a variance below the
5 sentencing guidelines is appropriate and warranted.

6 I don't think a five-year sentence is needed to serve
7 the purposes that I mentioned. I also think that a 36-month
8 sentence is greater than necessary to serve those purposes.

9 Weighing everything I've mentioned, I believe that a
10 sentence of 18 months' imprisonment is an appropriate sentence
11 and is sufficient to meet the characteristics while taking into
12 account the positive factors I've mentioned.

13 Therefore, I intend to sentence the defendant to 18
14 months' imprisonment followed by three years of supervised
15 release.

16 Does defense counsel know of any legal reason that
17 sentence may not be imposed?

18 MR. BUTLER: No, your Honor.

19 THE COURT: Does the government know of any legal
20 reason that sentence may not be imposed?

21 MS. MORTAZAVI: No, your Honor.

22 THE COURT: Mr. Robinson, it is the judgment of this
23 Court that you be sentenced to the custody of the
24 Bureau of Prisons for a period of 18 months.

25 Following release, you'll be placed on supervised

1 release for three years with the following conditions:

2 You will not commit another federal, state, or local
3 crime.

4 You will not possess or use an illegal controlled
5 substance. You will submit to one drug testing within 15 days
6 of placement on supervised release and at least two drug tests
7 thereafter as directed by probation.

8 You will not possess a firearm or destructive device.

9 You will cooperate with the collection of DNA as
10 directed by the probation officer.

11 The standard conditions are imposed with the following
12 special conditions:

13 You will submit your person, residence, place of
14 business, vehicle, and any property, or electronic devices
15 under your control to a search on the basis that probation has
16 a reasonable suspicion that contraband or evidence of a
17 violation may be found.

18 The search must be conducted at a reasonable time and
19 in a reasonable manner. Failure to submit to a search may be
20 grounds for revocation, and you shall warn any other residents
21 that the premises may be subject to search.

22 You shall provide probation with access to any
23 requested financial information.

24 You shall not incur any new credit charges or open
25 additional lines of credit without the approval of the

1 probation officer.

2 You will participate in an outpatient substance abuse
3 treatment program approved by probation which may include
4 testing to determine whether you've reverted to using drugs or
5 alcohol.

6 You shall contribute to the cost of services rendered
7 based on ability to pay or the availability of third-party
8 payment.

9 And the Court authorizes the release of drug treatment
10 evaluations and reports, including the presentence report, to
11 the substance abuse provider.

12 You shall also participate in an outpatient mental
13 health treatment program approved by the probation office.

14 And you shall continue to take any prescribed
15 medications, unless instructed by the health care provider.

16 And the other terms will be identical to the substance
17 abuse treatment program, including the release of evaluations
18 and reports to the health care provider.

19 If the probation officer determines, based on your
20 record, personal history, and characteristics, that you pose a
21 risk to another person, including an organization, the
22 probation officer, with prior approval of the Court, may
23 require you to notify the person about the risk and comply with
24 that instruction.

25 The probation officer may contact the person and

1 confirm that you have notified the person about the risk.

2 You shall report to the nearest probation office
3 within 72 hours of release, and I recommend that you be
4 supervised by the district of your residence.

5 I am not imposing a fine because the probation
6 department reports that you're not in a position to pay a fine.
7 However, there is a \$100 special assessment which is hereby
8 imposed.

9 As agreed in the plea agreement and as stated in the
10 preliminary order of forfeiture, you shall forfeit to the
11 United States the sum of \$3,832,318.90. \$3,832,318.90.

12 I'll hear from the parties on a surrender date.

13 Do you have a preference, Mr. Butler, on a surrender
14 date?

15 MR. BUTLER: Yes, your Honor. Scott had a doctor's
16 appointment with his neurosurgeon yesterday. The Court may
17 recall that a couple months ago he had complicated neck
18 surgery.

19 Apparently one of the screws is coming out a little
20 bit, and his physician has told him that he needs to wear a
21 bone-growth stimulator for four hours a day for the next three
22 months to hopefully make the bone heal there on the screw.

23 Because of that, it's our motion to allow him to
24 report, since that will take three months -- after three
25 months, he'll have X-rays on his neck again.

1 I wonder if the Court would allow him to report in six
2 months. I know that's a long report date, but given the fact
3 that he's had serious surgery and he needs time to heal from
4 that, that's our request.

5 THE COURT: Ms. Mortazavi, would the government like
6 to address that?

7 MS. MORTAZAVI: Your Honor, under the circumstances
8 and given Mr. Robinson's medical issues, the government does
9 not object to that proposed surrender date.

10 THE COURT: All right. So you said six months.

11 MR. BUTLER: Yes, your Honor.

12 THE COURT: So September?

13 MR. BUTLER: Yes. Also, your Honor, I understand that
14 you can't order the Bureau of Prisons to place him anywhere in
15 particular, but I ask that you recommend a facility as close to
16 his home as possible.

17 THE COURT: His home in Florida?

18 MR. BUTLER: Yes. In Tampa, Florida.

19 THE COURT: In the Tampa area. Okay. With respect to
20 a surrender date, I'm ordering that the defendant surrender to
21 the facility designated by the Bureau of Prisons on
22 September 7, Tuesday, September 7, 2021, before 2:00 p.m.

23 With respect to designating a facility, I can only
24 make a recommendation. The Bureau of Prisons ultimately has
25 the authority to decide. But I will make a recommendation that

1 he be designated to a facility as near as possible to the
2 Tampa, Florida, area to facilitate visitation.

3 With respect to forfeiture, Ms. Mortazavi, can you
4 remind me. Is there already a forfeiture order, a preliminary
5 order, signed?

6 MS. MORTAZAVI: Yes, your Honor. It's at ECF number
7 30.

8 THE COURT: Thank you.

9 Mr. Robinson, I want to advise you of your appeal
10 rights. You have the right to appeal from your conviction and
11 sentence, except to the extent you have waived that right as
12 part of your guilty plea and plea agreement.

13 If you cannot pay the costs of an appeal, you may
14 apply for leave to appeal without payment of costs. An appeal
15 must be filed within 14 days of the filing of the judgment, and
16 a complete copy of the presentence report will be provided to
17 the BOP and Sentencing Commission.

18 Are there any open underlying counts that the
19 government seeks dismissal of?

20 MS. MORTAZAVI: There is an underlying indictment,
21 your Honor, that the government moves to dismiss.

22 THE COURT: All right. The underlying indictment is
23 hereby dismissed.

24 Anything further from the government?

25 MS. MORTAZAVI: Nothing from the government. Thank

1 you, your Honor.

2 THE COURT: Anything further from Mr. Butler?

3 MR. BUTLER: No, your Honor. Thank you.

4 THE COURT: Okay. Thank you very much. This matter
5 is adjourned.

6 (Adjourned)

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